

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Case No.: 2:18-cr-00399-JAD-CWH

Plaintiff

**Order Denying Motion for
Compassionate Release and
Motion for Appointment of Counsel**

v.

Yoel Guerra-Vinales

[ECF Nos. 83, 84]

Defendant

Defendant Yoel Guerra-Vinales moves for compassionate release from his 84-month term of imprisonment, arguing that his health history and the conditions at the prison where he is incarcerated put him at a greater risk of complications should he contract COVID-19.¹ The government does not contest Guerra-Vinales's medical conditions but argues that he is fully vaccinated against COVID-19 and is receiving adequate medical care.² Because Guerra-Vinales has not demonstrated an extraordinary and compelling reason for his release, I deny his motion. Guerra-Vinales also moves for appointment of counsel. But because the federal public defenders appeared and filed a notice of non-supplementation,³ I deny that motion.

Background

In 2022, Guerra-Vinales was sentenced to 84 months in prison followed by three years of supervised release for two counts of distribution of methamphetamine.⁴ Guerra-Vinales is housed at the Federal Bureau of Prisons' (BOP) federal-detention center in Yazoo City,

¹ ECF No. 83 at 1.

² ECF No. 89.

³ ECF No. 88.

⁴ *Id.*

Mississippi.⁵ He asks the court to reduce his sentence to time served and to give him a term of home confinement as part of his supervised release instead because he believes that he is at an increased risk of contracting COVID-19 and chicken pox at his facility.⁶ The government opposes Guerra-Vinales's motion, arguing that he cannot show extraordinary and compelling reasons for compassionate release because he is fully vaccinated and receives adequate medical care.⁷

Discussion

A sentencing court's ability to modify or reduce a sentence once imposed is seriously limited.⁸ The compassionate-release provision of 18 U.S.C. § 3582(c)(1)(A)(i), as amended by the First Step Act of 2018,⁹ is an exception to this limitation. It allows the sentencing judge to reduce a sentence based on "extraordinary and compelling reasons" after the defendant has failed to get the BOP to bring such a motion on his behalf.¹⁰ In determining whether extraordinary and compelling reasons exist, the sentencing judge must consider the factors in 18 U.S.C. § 3553(a) "to the extent that they are applicable."¹¹ And any sentence reduction must be "consistent with applicable policy statements issued by the Sentencing Commission."¹² The court may entertain an inmate's request for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) only (1) "after [he] has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to

⁵ See ECF No. 187 at 7.

⁶ ECF No. 169 at 11, 13.

⁷ *Id.* at 2.

⁸ See *United States v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003); 18 U.S.C. § 3582(c).

⁹ The First Step Act of 2018, § 603(b), Pub. L. 115-391, 132 Stat. 5194, 5239 (Dec. 21, 2018).

¹⁰ 18 U.S.C. § 3582(c)(1)(A)(i).

¹¹ *Id.*

¹² *Id.*

1 bring a motion” on his behalf or (2) after “the lapse of 30 days from the receipt of such a request
2 by the warden of the defendant’s facility, whichever is earlier.”¹³

3 Both parties agree that Guerra-Vinales exhausted his administrative rights.¹⁴ Guerra-
4 Vinales contends that his age, asthma, high blood pressure, diabetes, anxiety, and sleep terrors
5 increase his risk for health complications that arise out of COVID-19 and chicken pox.¹⁵ He also
6 argues that the prison’s conditions make him unable to practice social distancing and therefore
7 exacerbate the potential effects of COVID-19.¹⁶ But Guerra-Vinales’s reasons for wanting
8 release are neither extraordinary nor compelling.

9 As of November 30, 2023, the prison where Guerra-Vinales is incarcerated is at its lowest
10 modified-operation level.¹⁷ The BOP has also made COVID-19 vaccines and boosters available
11 to inmates and has implemented a detailed COVID-19-response plan.¹⁸ The government also
12 notes that Guerra-Vinales has received medical care numerous times since June 2022 and has
13 been prescribed medication to address his health conditions.¹⁹ So the mere possibility that
14 Guerra-Vinales may contract COVID-19, even considering his increased health-risk factors, falls
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17 ¹³ *Id.*

18 ¹⁴ *See* ECF No. 89 at 1.

19 ¹⁵ ECF No. 83 at 3.

20 ¹⁶ *Id.*

21 ¹⁷ Institutions determine their operational level based on two COVID-19 risk indicators: the
22 facility’s COVID-19 inmate-isolation rate and the COVID-19 community risk in the county in
which the facility is located. If both these factors show low COVID-19 risk, the institution is at
its lowest operational level and operates as usual.
<https://www.bop.gov/locations/institutions/yap/>.

23 ¹⁸ https://www.bop.gov/coronavirus/COVID-19_modified_operations_guide.jsp.

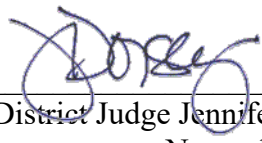
¹⁹ ECF No. 89 at 7.

1 short of providing an extraordinary and compelling reason to reduce his sentence. Because there
2 is no extraordinary and compelling reason, I need not consider the 18 U.S.C. § 3553(a) factors.

3 **Conclusion**

4 IT IS THEREFORE ORDERED that Guerra-Vinales's motion for compassionate release
5 under 18 U.S.C. § 3582(c)(1)(A) **[ECF No. 169] is DENIED.**

6 IT IS FURTHER ORDERED that Guerra-Vinales's motion for appointment of counsel
7 **[ECF No. 84] is DENIED.**

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11 U.S. District Judge Jennifer A. Dorsey
12 November 30, 2023
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